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Supreme Court, U.S.
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No. 07-__ 07-945

IN THE

Supreme Court of the United States

VIKAS SAREEN,

Petitioner,

v.

REEMA SAREEN,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Third Appellate District

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PETITION FOR A WRIT OF CERTIORARI

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January 14, 2008

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QUESTIONS PRESENTED

1. Whether California Court of Appeal's determination, in conflict with other state courts of last resort, that India was not the "Home State" when duplicate action was filed in California, notwithstanding bright-line test to the contrary, violates petitioner's constitutional rights under the Privileges and Immunities Clause of Article IV, Section 2 and Equal Protection of laws under the Fourteenth Amendment.

2. Whether California Court of Appeal, Third Appellate District err in exercising jurisdiction for initial child custody determination and thereby creating simultaneous jurisdiction in conflict with other state courts of last resort and in contravention of the legislative purpose and intent of the uniform interstate jurisdictional act, the Uniform Child Custody Jurisdiction and Enforcement Act, UCCJEA, 9(1A) U.L.A. 657 (1999) and the federal Parental Kidnapping Prevention Act, PKPA, 28 U.S.C. 1738A (1980).

PARTIES TO THE PROCEEDING

Vikas Sareen was the respondent and Reema Sareen was the petitioner in the proceedings below.

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IN THE

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No. 07-___

VIKAS SAREEN,
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v.

REEMA SAREEN,
Respondent.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Third Appellate District

PETITION FOR A WRIT OF CERTIORARI

VIKAS SAREEN respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeal of the State of California, Third Appellate District.

OPINIONS BELOW

The opinion of the California Court of Appeal, Third Appellate District (App., *infra*, 1a-18a) reversing trial court's ruling is reported at 153 Cal. App.4th 371. California trial court's ruling is reprinted at (*id.*, 19a-23a). California Court of Appeal, Third Appellate District's intermediate denial of writ of mandamus that affirmed trial court's ruling is reprinted at (*id.*, 24a).

JURISDICTION

The California Supreme Court (App., *infra*, 26a) denied discretionary review on October 17, 2007. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions relevant to this case are set forth at App. 27a-30a, *infra*.

STATEMENT OF THE CASE

A. Factual Background.

Petitioner, Vikas Sareen, a U.S. Citizen of Indian origin was domiciled in the State of New York. Respondent, Reema Sareen, a citizen of India was domiciled in New Delhi, India. Parties were married in 2002 in New Delhi, India, under the laws of India.

Petitioner contends that Respondent entered the marriage by Fraud by falsely projecting herself to have a college degree when she had none. Also, petitioner contends that respondent entered this sham marriage, that she had no intention to remain in from the outset, to procure a Green Card and implement a Quick-Rich scheme. Despite respondent's feverish attempts to abort, the child was born on February 20, 2004 in New York. While in India in August of 2004, frustrated by respondent's on-going cruel and inhumane behavior, Divorce and Custody proceedings were filed in Delhi District Court, India and both parties have been represented by legal counsel in Divorce, Annulment and Custody proceedings since 2004. While proceedings were pending in India, respondent surreptitiously removed the child

from India and traveled to California in November of 2005 and filed a duplicative child custody action in Sacramento County Superior Court (hereinafter "trial court") on January 31, 2006, while actively litigating the same case in the Courts of India since 2004. Petitioner filed a Motion to Quash for lack of subject matter jurisdiction as the same case was pending in the courts of India.

B. Procedural Background.

The trial court granted petitioner's motion to quash California's lack of subject matter jurisdiction under the UCCJEA in its ruling dated July 21, 2006. The trial court found that California was not the "Home State" when respondent filed the custody action less than six months after living in California. The trial court also found India was the "Home State" at the time the action in California was filed on January 31, 2006, and California did not have jurisdiction under the UCCJEA. The trial court found that the child had never lived in California prior to November 2005. Further, the trial court found that India must decline its jurisdiction in order for California to have jurisdiction under the UCCJEA.

Respondent filed a writ of mandamus against the trial court's ruling on August 23, 2006, which was summarily denied by California Court of Appeal, Third Appellate District (hereinafter "TAD court") by its order (App., *infra.*, 24a) dated September 14, 2006.

On appeal, respondent reiterated her arguments of the writ petition that California had jurisdiction based on "significant connections" with California. Contrary to the trial court's finding that India was the Home State when California action was filed and further reinforced by TAD court's denial of respon-

dent's writ of mandamus, TAD court now determined that India was not the Home State when California action was filed on January 31, 2006. The TAD court also determined that California was not the Home State when the custody action was filed under California Family Code ("FC") § 3421(a)(1). The TAD court then applied FC § 3421(a)(2) and determined that California had jurisdiction on a "significant connections" basis.

The TAD court remarked that there was no case in California on point. However, instead of applying "Home State" as defined under FC § 3402(g) to the facts and in contravention of the plain meaning, common principles of statutory construction, legislative intent and policies underlying the UCCJEA and the PKPA, the TAD court determined that India was not the "Home State" when the California action was filed on January 31, 2006.

Accordingly, in an opinion filed on June 21, 2007, TAD court reversed trial court's finding that India was the Home State when California action was filed and seized jurisdiction based on "significant connections" without India declining jurisdiction. On July 17, 2007, TAD court ordered publication of the decision. Petitioner timely filed a petition for rehearing that directed the court's attention to the UCCJEA and the PKPA but was denied without explanation in its order (App., *infra*., 25a) dated July 19, 2007, two days after ordering publication of the previously unpublished decision.

A subsequent petition for review to the California Supreme Court was denied on October 17, 2007.

It is pertinent to mention that respondent, after litigating the custody matter for three years, filed an

application with Delhi District Court to dismiss the proceedings. A newly-appointed judge to the case, without considering petitioner's response to the application on merits, granted relief to the respondent *despite* an earlier Delhi High Court's order to the contrary with directions to the District Court to proceed further with the case and decide the custody issue expeditiously. Petitioner is filing an appeal with Delhi High Court to vacate lower court's wrongfully passed order.

REASONS FOR GRANTING THE PETITION

I. THIS CASE RAISES A FUNDAMENTAL QUESTION OF NATIONWIDE IMPORTANCE OF DEFINING "HOME STATE" FOR EXERCISING JURISDICTION IN AN INITIAL CHILD CUSTODY DETERMINATION UNDER THE UCCJEA AND THE PKPA.

Both Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (b)(4) and California's enactment of the Uniform Child Custody and Enforcement Act as codified in Family Code (FC) § 3402 (g) in pertinent part define Home State as " the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." It is a matter of record that the respondent and child lived in India within six months immediately before the commencement of the duplicative child custody proceeding in California. As such, the UCCJEA is clear that India was the home state at the time the child custody proceeding was commenced in California on January 31, 2006, as properly determined by the California Superior Court and affirmed by the

TAD court in its interim denial of writ of mandamus filed by the respondent against California Superior Court's ruling.

Upon further appeal by the respondent, instead of applying "Home State" as defined under FC § 3402(g) to the facts, California Third Appellate District Court digressed into analysis of case law of other jurisdictions to determine whether India was the "Home State" at the time custody proceedings commenced in California on January 31, 2006. Case law is to be relied on when, unlike here, there is an absence of a clear statute on point. The legislature, in enacting the UCCJEA, explicitly provides a test for the determination of the "Home State" as defined in California FC § 3402(g). As this Court has explained:

> "[I]n interpreting a statute, a court should always turn to one cardinal canon before all others . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain,* 112 S. Ct. 1146, 1149 (1992). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *id.*

Other state courts of last resort, when faced with the threshold question of "Home State" in an initial child custody determination in a proceeding filed in its court, have consistently applied the bright-line test of where the child and a parent lived within six-months prior to that date, *Powell v. Stover,* 165 S.W.3d 322, 48 Tex. Sup. Ct. J. 780 (Texas Supreme Ct., 2005), *Stephens v. Fourth Judicial Dist. Ct.* 128 P.3d 1026 (Montana Supreme Ct., 2006), *Welch-Doden v. Roberts,* 42 P.3d 1166 (Arizona Appellate Ct. 2002). In *re McCoy,* 52 S.W.3d 297 (Texas App.

2001) and the many cases around the country that cite and follow this case, the court directed the trial courts to determine jurisdiction under the UCCJEA by first examining that court's jurisdiction by looking only at where the child and a parent resided for the prior six months at the time the action commenced in that jurisdiction. Further, the operative date for determining whether Texas has jurisdiction is the date suit was filed in Texas. Court noted that Texas trial court made an error in its analytical approach by using the date of the earlier case filing in Qatar as the date of "commencement of the proceeding" for purposes of determining whether Texas has jurisdiction. The court held that under the clear language of Texas UCCJEA, the date for Texas's determination of which state has jurisdiction is the date of the commencement of proceedings in Texas. As such, TAD court's determination that India was not the "Home State" when California action was filed on January 31, 2006, notwithstanding bright-line test to the contrary, was prejudicial error as it contravened the plain meaning, statutory construction, legislative intent and policies delineated in the UCCJEA.

The TAD court decision cited circumlocutory or pre-UCCJEA case law from other state courts in its declaration that India was not the "Home State" when California action was filed. Petitioner contends that reliance on all three cases in California decision was misplaced and misconstrued in declaring that India was not the Home State when California action was filed. First, in *Atkins*[1], although based on the UCCJEA, the Alaska court exercised its own jurisdiction on its own "recent Home State" status *when the Alaska action was filed* and not because California

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[1] *Atkins v. Vigil*, 59 P3d 255 (Alaska, 2002).

was not the Home State *when the California action was filed*, as improperly construed by the opinion in the instant case. Second, the *Irving*[2] and *Hegler*[3] cases were based on the repealed Uniform Child Custody Jurisdiction Act, UCCJA, 9 U.L.A. 123 (1988) and the transition of custody law in effect even prior to the UCCJA (thus twice removed from the UCCJEA), respectively. The TAD opinion notes that cases interpreting the prior law, UCCJA including decisions of other states interpreting similar provisions of the uniform act as adopted in California, may be persuasive in deciding cases under the UCCJEA, *except* [emphasis added] *where the two statutory schemes vary*, (citations omitted). Petitioner submits that no where is the difference between the two statutory schemes more pronounced than on the jurisdictional basis, the very issue under review in this case. As such, court's reliance on case law based on the UCCJA and the custody law in transition from the custody law twice removed from the UCCJEA, both based on concurrent jurisdictional basis as opposed to Home State priority under the UCCJEA, are misleading at best.

II. THE CALIFORNIA DECISION VIOLATES PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF ART. IV, SEC. 2 AND EQUAL PROTECTION OF LAWS UNDER THE FOURTEENTH AMENDMENT.

Petitioner contends that California's decision of declaring India was not the Home State at the time

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[2] *Irving v. Irving*, 682 SW2d 718 (Texas, 1985).

[3] *Hegler v. Hegler*, 383 So. 2d 1134 (Florida, 1980).

instant action was filed in that state, despite the aforementioned bright-line test to the contrary, has violated his fundamental rights guaranteed under the Federal Constitution. Article IV, Section 2 of the U.S. Constitution in pertinent part states "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The Court in *Paul v. Virginia*, 75 U.S. 168 (1868) and in *Saenz v. Roe*, 526 U.S. 489 (1999) has held that the the object of the clause is to place the citizens of each State upon the same footing with citizens of other States and secures to persons in other States the equal protection of their laws. Furthermore, Fourteenth Amendment in pertinent part states "No State shall deny any person within its jurisdiction the equal protection of the laws". In the instant action, petitioner, a resident of New York has not been treated the same as other litigants in initial child custody jurisdiction determinations in California. Consistently, California in similar cases has determined the question of Home State by analyzing where the child lived within six-months prior to commencement of action in California, *In re A.C.*, 130 Cal. App. 4th 854 (2005) except for the instant action and has in effect caused simultaneous jurisdiction and protracted litigation in contravention of legislative purpose and intent of the UCCJEA and the PKPA. California's Family Code Section 3461 in pertinent part states "In applying and construing this Uniform Child Custody Jurisdiction and Enforcement Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it" expressly requires California to foster uniform application of the UCCJEA.

III. THE CALIFORNIA DECISION CREATES SIMULTANEOUS JURISDICTION IN CONFLICT WITH OTHER STATE COURTS OF LAST RESORT AND ENCOURAGES FORUM-SHOPPING NOT CONSONANT WITH THE UCCJEA AND THE PKPA.

One of the key purposes and legislative intent behind the enactment of the UCCJEA and its legislative evolution from the UCCJA is to discourage filing of duplicative custody proceedings, the very actions being pursued by the respondent in these proceedings in California to date. Other state courts of last resort, *Powell v. Stover,* 165 S.W.3d 322, 48 Tex. Sup. Ct. J. 780 (Texas Supreme Ct., 2005), *Stephens v. Fourth Judicial Dist. Ct.* 128 P.3d 1026 (Montana Supreme Ct., 2006), *Welch-Doden v. Roberts,* 42 P.3d 1166 (Arizona Appellate Ct. 2002), *In re McCoy,* 52 S.W.3d 297 (Texas App. 2001) have all rendered opinions under the UCCJEA, unlike here, to avoid simultaneous jurisdiction in line with the PKPA. Under both PKPA, 28.U.S.C. § 1738A (g) and California FC § 3426(a), California is prohibited from exercising its jurisdiction while the same action was pending in India. The TAD Court misconstrued substantial compliance with the UCCJEA in an international arena. India is a sovereign nation and has not enacted the UCCJEA. However, the custody case was filed in accordance with laws of India and is abundantly clear from the record, both parties have been represented and actively litigated the case in India. The *legislative intent*[4] behind this section prohibiting simultane-

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[4] UCCJEA, National Conference of Commissioners on Uniform State Laws w/ Prefatory notes and comments, 1997, Section 105 that borrows from UCCJA, Section 23 [International

ous proceedings is what is of paramount interest and subject of inquiry. As long as *"Notice and Opportunity"* to be heard is given to all affected parties, due process concerns of substantial compliance with the UCCJEA are met and FC 3426(a) prohibition is applicable. Further, TAD's rationale that India's assuming jurisdiction over the custody matter as it was filed within six months of child living in India was not in substantial conformance with the UCCJEA is flawed as it ties in only one of four jurisdictional basis, *i.e.* Home State available under the UCCJEA. Under the circumstances, as respondent, a life-long resident of New Delhi, India was in her own hometown in India and her conditional Green Card had expired, petitioner submitted himself to judicial process in India and filed the custody matter to be adjudicated in the Delhi District Court along with the divorce action. Had the petitioner taken the child with him, the respondent would have accused him of parental kidnapping. Further, respondent prevented Petitioner from traveling to India by making false dowry allegations in the divorce proceedings. Under the circumstances, there was no state that was exercising or could have exercised jurisdiction and it can be inferred that India exercised its jurisdiction not only in accordance with its own laws but also under emergency jurisdictional basis pursuant to § 201(a)(4) of UCCJEA, 9(1A) U.L.A. 657(1999) as codified in California FC § 3421(a)(4). Accordingly, contrary to TAD's determination, India was in substantial compliance with the UCCJEA and as such

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Application] (Commentary in pertinent part "The general policies of this Act extend to the International area . . . recognition applies if reasonable notice and opportunity to be heard were given to all affected persons).

California was precluded from exercising its jurisdiction. It is also pertinent to mention that respondent avoided being served with the custody action until February 21, 2005 more than six months after the child and respondent had lived in India. In *Thompson v. Thompson*, 484 U.S. 174, 187 (1988), the Court remarked that ultimate review remains available in this Court for truly intractable jurisdictional deadlocks. It further remarked that "should state courts prove as obstinate as petitioner predicts, Congress may choose to revisit the issue. But any more radical approach to the problem will have to await further legislative action" *id.* Petitioner submits that since the *Thompson* decision in 1988, custody litigation on similar grounds is continuing and legislature in most jurisdictions have replaced the UCCJA with UCCJEA since 1997. Despite this evolution of the law, the petitioner stands aggrieved in front of this Court in 2008, more than twenty years since the Thompson case approached this Court. Absent federal intervention and guidance, particularly in a case like this, the issue of simultaneous and conflicting jurisdiction in this global economy that is likely to occur, cannot be resolved. This case represents a truly intractable jurisdictional deadlock requiring review that was predicted by Justice Marshall in *Thompson, supra.* at 187.

IV. EVEN IF INDIA IS DECLARED NOT THE HOME STATE WHEN ACTION IN CALIFORNIA WAS FILED, IT REMAINS TO BE DECIDED IF A FIRST-IN-TIME FILED JURISDICTION HAS PRIORITY PURSUANT TO UCCJEA, COMITY AND PRINCIPLES OF INTERNATIONAL JURISPRUDENCE.

UCCJEA retains UCCJA's policy of prioritizing first-in-time action when there there is no Home State, more than one significant connection state and no one state with exclusive continuing jurisdiction. As such, even if India was deemed to not be the "Home State" when California action was filed, then under the UCCJEA, first action filed controls[5] and as such jurisdiction was with India. If the Court did not deem India as the Home State when the California action was filed, then there was no Home State as California was not the child's Home State at the time action was filed in California. Second, India continued to exercise its jurisdiction over the custody matter; therefore, there was no state with exclusive continuing jurisdiction. Third, the UCCJEA has deviated from the UCCJA by eliminating language of present or future care when reviewing a "significant connec-

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[5] UCCJEA, National Conference of Commissioners on Uniform State Laws w/ Prefatory notes and comments, 1997, Simultaneous Proceedings, Sect. 206, Commentary, in pertinent part states, "the simultaneous proceeding problem will arise when there is no Home State, no State with exclusive continuing jurisdiction and more than one significant connection State. For those cases, this section retains the "first in time" rule of the UCCJA".

tion" basis of jurisdiction.[6] Thus, there is more than one significant connection State. In view of the foregoing analysis, *first-in- time action*, that is the India custody action controls under the UCCJEA. India is a sovereign nation and a competent jurisdiction with laws based on English common law similar to the basis of law in the United States, including California. Both parties have participated in the Indian Court with legal representation for over three years. It is fundamentally unfair for the respondent to engage in this protracted jurisdictional conflict in a blatant attempt of forum-shopping. It is equally unfair for the TAD Court to encourage such forum-shopping at the costs and sufferings of the petitioner and in contravention of principles of comity, international jurisprudence and in the interests of justice. Under the circumstances, California should yield to the first-in-time filed action and allow it to be adjudicated along with the pending divorce and annulment actions pending in the courts of India.

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[6] UCCJEA, National Conference of Commissioners on Uniform State Laws w/ Prefatory notes and comments, 1997, Sect. 201, Comment 2, in pertinent part states, "Evidence might relate to the past as well as to the "present or future".

CONCLUSION

Petitioner respectfully requests this Court to exercise its discretion and grant review to resolve the fundamental issues with nationwide importance and impact presented here for the guidance of courts and litigants alike. This Court should grant certiorari to ensure that the jurisdictional basis for initial child custody determination with nationwide implications will not be undermined by this decision. In the alternative, it is inevitable that this published decision will create ambiguity and give rise to inconsistent decisions in the future.

Respectfully submitted,

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January 14, 2008

APPENDIX

APPENDIX A

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

C053784
(Super. Ct. No. 06FL00798)

In re the Marriage of REEMA and VIKAS SAREEN.

REEMA SAREEN,

Appellant,

v.

VIKAS SAREEN,

Respondent.

Reema Sareen (wife) appeals the trial court's grant of (husband) Vikas Sareen's motion to quash jurisdiction in wife's child custody petition. Wife contends the trial court erred in concluding India was their child's home state under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA or Act) (Fam. Code, § 3400 *et seq.*)[1] and that, absent an order

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[1] "In 1973, California adopted the Uniform Child Custody Jurisdiction Act (UCCJA). (Former Civ. Code, § 5150 et seq., added by Stats. 1973, ch. 693, § 1, pp. 1251-1259.) In 1997, a revised version of the UCCJA was promulgated as the UCCJEA. Its purpose, in addition to harmonizing inconsistent case law under the UCCJA, was to 'bring[] a uniform procedure to the law of interstate enforcement' by 'provid[ing] . . . a remedial process to enforce interstate child custody and visitation determinations.' (9 West's U. Laws Ann. (1999) Uniform Child Custody

from the court in India declining jurisdiction, California did not have jurisdiction. Wife contends California has jurisdiction under the UCCJEA. We agree with wife and shall reverse the order granting husband's motion to quash.

FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2002, husband and wife were married in New Delhi, India. In July 2002 they moved from India to New York State. Husband is a United States citizen and wife is a legal resident of the United States. Their daughter, S., was born in New York on February 20, 2004. She is a United States citizen.

According to wife, on August 20, 2004, husband told her the family was going to Switzerland for a vacation. However, when they got to Frankfurt, Germany, they changed planes not for Switzerland, but for India. They arrived in India on August 21, 2004. Less than a week later, on August 27, 2004, husband filed for divorce in an Indian court. Three days later, on August 30, 2004, husband filed a petition for custody of S. in the Indian court and an application to restrain wife from leaving India with S. Husband then returned alone to New York.

According to wife, husband abandoned wife and six-month-old S. in New Delhi without financial support, taking with him wife's United States residency documents, her Indian passport, and S.'s United States passport. Wife tried to obtain replace-

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Jurisdiction Act, Prefatory Note, p. 650.) California adopted the UCCJEA effective January 1, 2000. (Fam. Code, §§ 3400-3465, added by Stats. 1999, ch. 867, § 3.)" (*In re Marriage of Paillier* (2006) 144 Cal.App.4th 461, 469.) Further undesignated statutory references are to the Family Code.

ment documents to allow her return to the United States with S. When wife tried to obtain a replacement passport for S., husband refused to sign the necessary consent "for purposes relating to certain pending court proceedings." Wife was able to temporarily return to the United States in February/March 2005 to work on her own immigration papers and request S.'s passport. She then rejoined her daughter in India in March 2005. S.'s new United States passport was eventually issued on September 21, 2005. Wife and S. were able to leave India on November 5, 2005. They flew to New York and then a few days later flew to California where they took up residence.

Husband denied he abandoned wife and S. in India. He declared it was understood they were going to vacation there, but that wife's continued tantrums, threats, and cruel behavior compelled him to file for divorce shortly after their arrival. He claimed he voluntarily left S. with wife while the divorce and custody proceedings were pending, after making provisions for their support. He denied taking wife's or S.'s passports or documents. He claimed wife had property and family in New Delhi. He contended wife was legally required to stay in India while the divorce and custody proceedings were pending there.

The divorce and custody proceedings in India, started by husband in August 2004, continued with husband and wife both flinging accusations of mistreatment, abuse, lies, threats, neglect, misrepresentations, and fraud against each other. Wife apparently filed a dowry action against husband. Husband sought to change his divorce petition to an annulment proceeding based on allegations that wife fraudulently induced their marriage on a false repre-

sentation of her educational background. On application by wife, the India trial court entered an order in May 2005 requiring husband to pay child and spousal support. The record contains evidence of husband paying only two months of the ordered support. The Indian court did not enter any order restraining wife or S. from leaving the jurisdiction and the statute referenced by husband as barring wife's leaving applied only where a guardian was appointed, which had not occurred.

On January 31, 2006, wife filed, in the Sacramento County Superior Court, a petition for child custody and support, including a request for child abduction prevention orders.

Husband filed a motion to quash jurisdiction premised on the grounds that (1) India has jurisdiction of the custody proceedings for S. and wife illegally kidnapped S. to come to California, (2) S. did not have minimum contacts with California, (3) husband did not have minimum contacts with California, and (4) that husband did not cause an effect in California.

Wife opposed husband's motion to quash denying husband's factual contentions and claiming she did not violate Indian law or any Indian court order by moving back to the United States when she was able to do so, that she never intended to go to India or stay there, that her presence in India was not voluntary, and that she was now lawfully living in California with the permission of the Indian government. Wife argued personal jurisdiction over husband was not necessary for a custody determination under the UCCJEA, that the Indian proceedings did not preempt exercise of California jurisdiction, and that California could exercise jurisdiction premised either on California being S.'s home state or on there being

no home state and S.'s significant connection with California. Wife stated in November 2005 she came to Sacramento where her brother lives and works and is able to give her and S. considerable moral support. She is working part-time here and is receiving Temporary Assistance to Needy Families (TANF).

While husband's motion to quash was pending in Sacramento, the court in India dismissed the application of husband for an order staying the proceedings in California, finding it did not have jurisdiction over a California court. The Indian court denied husband's request for an interim custody order, but the issue of custody remained pending in the Indian court.

After argument and supplemental briefing, the trial court filed a ruling on submitted matter granting husband's motion to quash. In pertinent part, the ruling stated: "In this case, the divorce case commenced in India, one week after [wife] and [S.] arrived there. Thus, India was not the home state under the UCCJEA for purposed [*sic*] of the proceeding in Delhi. At the time [S.'s] home state was New York. This action was filed on January 31, 2006. At the time [S.] had resided in India for a year and thus under the statutory definition India was the home state for purposes of the UCCJEA. . . . [¶] [T]he Court in India has not declined to exercise its jurisdiction and may in fact do so on August 1 [the date set for hearing in the Indian court, which according to the parties has since been continued]. The UCCJEA is clear, at this time absent an order from the Delhi court declining jurisdiction in favor of California, this Court does not have jurisdiction under the UCCJEA."

DISCUSSION

It is well-settled in California that the UCCJEA is the exclusive method of determining subject matter jurisdiction in custody disputes involving other jurisdictions. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 310; *In re A.C.* (2005) 130 Cal.App.4th 854, 860; *In re C. T.* (2002) 100 Cal.App.4th 101, 106; § 3421, subd. (b).) The UCCJEA applies to international custody disputes as well as interstate disputes. (*In re Stephanie M., supra,* at p. 310; *In re A.C., supra,* at p. 860.) Under the Act, foreign countries are to be treated as states for the purpose of determining jurisdiction, unless the child custody law of the country violates fundamental principles of human rights. (§ 3405, subds. (a), (b) and (c).) Nothing in the record suggests the custody law of India in any way violates principles of human rights.

Although there is some conflict in the parties' version of events in this case, the relevant jurisdictional facts are largely undisputed. "We are not bound by the [trial] court's findings regarding subject matter jurisdiction, but rather 'independently reweigh the jurisdictional facts.' [Citation.] '[S]ubject matter juris-diction either exists or does not exist at the time the action is commenced' [citation] and cannot be conferred by stipulation, consent, waiver, or estoppel [Citations]." (*In re A.C., supra,* 130 Cal. App.4th at p. 860; *Guardianship of Ariana K.* (2004) 120 Cal.App.4th 690, 701 [where evidence is not in dispute, de novo review applies].) The action is commenced when the first pleading is filed (§ 3402, subd. (e); *In re Marriage of Torres* (1998) 62 Cal. App.4th 1367, 1374); here, January 31, 2006.

The first issue we address is whether the trial court was precluded from exercising jurisdiction due

to the pendency of the custody proceedings in India. Husband admits he filed for custody in India before the family had been in the country for six months, which would have been a requirement under the UCCJEA for home state jurisdiction, but claims his action came within the jurisdictional requirements of Indian law and that the proceeding in India precludes the exercise of jurisdiction by a California court under section 3426, subdivision (a).

Section 3426, subdivision (a), reads: "Except as otherwise provided in Section 3424 [temporary emergency jurisdiction], a court of this state may not exercise its jurisdiction under this chapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state *having jurisdiction substantially in conformity with this part,* unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 3427." (Italics added.)

On January 31, 2006, when wife filed her custody petition in this case, custody proceedings had been commenced and were pending in India. The pertinent question under section 3426, subdivision (a), is not whether the Indian court had jurisdiction under its own laws for such proceeding, but whether such jurisdiction was in "substantially in conformity with [the UCCJEA]." (§ 3426, subd. (a).) Here it is undisputed husband filed his custody petition on August 30, 2004, only nine days after the family arrived in India. Such a miniscule amount of time in India does not come close to establishing the connection to the state required by the UCCJEA for the exercise of custody jurisdiction. (See § 3421.) India's jurisdic-

tion in the pending custody proceeding, while presumably adequately established under Indian law, was not in substantial conformity with the UCCJEA. Nor did the India court's order on application of wife requiring husband to pay child support confer jurisdiction on India under the UCCJEA. Under section 3402, subdivision (c) a child custody determination does not include an order relating to child support. The trial court was not precluded from exercising its jurisdiction, if it had it, because of the pendency of the proceeding in India.

We turn to the question of whether the trial court had jurisdiction to exercise in this case under the Act.

Section 3421, subdivision (a), confers jurisdiction on a California court "only if any of the following are true:

> "(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.
>
> "(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:
>
> "(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

"(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

"(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

"(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3)."

Section 3402, subdivision (g), provides the definition for the term "home state" as used in section 3421. "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period." (§ 3402, subd. (g).)

On January 31, 2006, wife and S. had lived in California for a period of under three months (they arrived a few days after November 5, 2005). Therefore, California was not the home state of S. on the date of the commencement of this proceeding. Nor is there any evidence that California "was the home state of [S.] within six months before the commencement of the proceeding and [S.] is absent from this state but a parent or person acting as a parent continues to live in this state" so as to give California jurisdiction under the second sentence of subdivision (a)(1) of section 3421 for recent home state jurisdiction. S. had never previously lived in California with either parent for any consecutive period of six

months, much less a period ending within the previous six months to January 31, 2006. The trial court did not have jurisdiction under subdivision (a)(1) of section 3421.

For California to exercise jurisdiction under subdivision (a)(2) of section 3421, we must first determine if there was any other state with home state jurisdiction under subdivision (a)(1) at the time of the commencement of wife's proceeding.[2] The trial court concluded that on January 31, 2006, S. "had resided in India for a year and thus under the statutory definition India was the home state" under the UCCJEA. It is undisputed S. lived in India from August 20, 2004 until November 5, 2005. However, we part company with the trial court in concluding such period of residence can be counted towards India being S.'s home state on January 31, 2006.

Although we have not found any California case holding on point,[3] cases in other states have con-

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[2] There is no evidence any court of any other state declined custody jurisdiction over S., so we do not need to address the portions of section 3421, subdivision (a), dealing with such a situation.

[3] In *Peery v. Superior Court* (1985) 174 Cal.App.3d 1085, the court considered a peremptory writ of mandate to compel the trial court to relinquish jurisdiction and to enforce a Louisiana custody decree entered subsequent to a stipulated California custody judgment. (*Id.* at p. 1089.) In deciding whether the California decree should be enforced, the court considered whether California had jurisdiction under the UCCJA, the prior law to the UCCJEA (see fn. 1, *ante*), when the original judgment was entered. The court first noted the California matter proceeded on a consensual basis and resulted in a default judgment without any hearing on the jurisdictional facts. (*Id.* at p. 1093.) The court then pointed to evidence the child had been in California for more than six months before the action was filed. (*Ibid.*) It then parenthetically noted the child was "certainly

cluded time spent in a forum after the filing of a child custody petition may not be counted towards the time necessary for home state jurisdiction. (See David Carl Minneman, Annotation, *Home State Jurisdiction of Court Under § 3(a)(1) of the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnapping Prevention Act (PKPA),* 28 U.S.C.S. § 1738A(c)(2)(A), 6 A.L.R.5th 1, 48-50.) Cases interpreting the prior law, UCCJA, including decisions of other states interpreting similar provisions of the uniform act as adopted in California, may be persuasive in deciding cases under the UCCJEA, except where the two statutory schemes vary. (*In re Marriage of Paillier*, *supra*, 144 Cal.App.4th at p. 469, quoting *In re A. C., supra,* 130 Cal.App.4th at p. 860; *In re Marriage of Newsome* (1998) 68 Cal.App.4th 949, 956; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2006) ¶ 7:80.5, p. 7-26.)

For example, in *Atkins v. Vigil* (2002) 59 P.3d 255, the Alaska Supreme Court reversed the decision of the trial court declining jurisdiction over a child custody petition, which had been based on a conclusion that California was the child's home state. The court ruled that California was not the child's home state

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there for more than six months before the decree determining custody was entered." (*Ibid.*, fn. omitted.) Finally, the court then discussed an alternate basis for jurisdiction under the prior act. (*Ibid.*) We do not view the quoted portion of the court's opinion as anything but dicta on the issue of whether time subsequent to filing can be counted towards the minimum time necessary for jurisdiction under the Act or its predecessor. The issue was not directly presented and resolution of it was not necessary to the court's opinion. "An appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided.' [Citations.]" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.)

when the guardianship petition there was filed less than six months after the child had arrived in California and "a child and parent cannot fulfill the six-month home state period through their continued residence in a state after a custody action has been filed." (*Id.* at p. 257, fn. omitted.)

In *Hegler v. Hegler* (1980) 383 So.2d 1134, the Florida court of appeal reversed in its entirety the trial court's custody decision as to one child because Florida did not have jurisdiction when Maryland was the home state of that child. As to the other child, the court reversed, but remanded the decision for hearing and a determination of emergency temporary jurisdiction. (*Id.* at p. 1137.) The court concluded with the following direction to the trial court: "The fact that the children have been in Florida since 1978 and that Florida may now have become their 'home state' pending the lengthy resolution of this appeal shall not be considered by the trial court in determining jurisdiction of [the children], as regards this or any future petition." (*Ibid.*, fn. omitted.)

In *Irving v. Irving* (1985) 682 S.W.2d 718, a Texas court of appeal concluded Texas did not have jurisdiction to award custody in an action filed in Texas by a father four days after he had brought his children to Texas, when the children had otherwise lived in Illinois and had been taken from their grandmother's home in Mississippi where they were temporarily staying. The court stated: "During the three-year duration of this legal battle, the children have undoubtedly developed roots in Texas. However, we cannot allow the appellee to bootstrap his

way into a Texas court based on relationships developed after suit was commenced." (*Id.* at p. 721.)[4]

Like these courts, we are persuaded a parent may not take a child to a jurisdiction, file a premature custody petition, and then use the time the child remains in that jurisdiction pending resolution of the petition to meet the six-month UCCJEA home state period, either in that custody proceeding or as a defense to the other parent's competing custody proceeding in another state. To do so would condone blatant forum-shopping, particularly here where it appears husband's actions were responsible for keeping S. in India after his filing of the divorce and custody actions.[5] Even husband concedes continued residence after filing does not satisfy the six-month-residence requirement for home state jurisdiction under the UCCJEA. Husband simply continues to assert Indian jurisdiction is proper under Indian law but does not answer the question of California's jurisdiction under the UCCJEA.

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[4] At oral argument respondent's counsel cited *In re McCoy* (2001) 52 S.W.3d 297, without notifying the court or counsel of his intended use of the case. We do not condone this irregular and unfair procedure. In any event, the case does not support respondent's position on appeal.

[5] We do not have to resolve the factual dispute over whether husband actually abandoned wife and S. without support in India, taking their passports and residency documents, as wife claims, because even if they were not abandoned and husband did not actually take the documents, the record clearly establishes the documents were lost and husband blocked wife's attempt to get a U.S. passport for S. reissued by refusing to give his consent "for purposes relating to certain pending court proceedings" and husband filed requests and applications in the Indian courts seeking to keep wife and S. in India.

We conclude India was not the home state of S. under the UCCJEA on January 31, 2006 when wife filed her petition in this case.

The only other state that could possibly have been S.'s home state on January 31, 2006, when wife filed her petition in this case, was New York. However, neither wife nor husband claim New York was then S.'s home state and indeed it is clear S. had not lived in New York since August 2004 and had only spent a few days in New York when wife and she came back to the United States in November 2005. Admittedly, periods of temporary absence of a child and parents from a state are counted in determining whether the period for home state jurisdiction has been met. (§ 3402, subd. (g); *In re Marriage of Torres, supra,* 62 Cal.App.4th at p. 1374.) It would, however, be a stretch of imagination on these facts to consider an absence, with the exception of a few days, of almost *seventeen months* to be a "temporary" absence from New York.

We conclude there was no state with home state jurisdiction on January 31, 2006, when wife filed her petition for child custody in the trial court.

In such a situation California may exercise jurisdiction under section 3421, subdivision (a)(2) when "both of the following are true: [¶] (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." The evidence established both were true in this case.

Here S. was not quite two years old at the time of wife's filing of the petition in California. Wife submitted a declaration in support of her opposition to husband's motion to quash in which she stated she and S. came to California approximately three months earlier and they were now "settled" in California, where she has the moral support of her brother who also lives here. Wife is working part-time and is receiving temporary public assistance. Husband did not submit any evidence contradicting wife's claims or establishing an alternate location of available important information regarding S.

Therefore, the undisputed evidence established wife's significant connection with this state beyond mere physical presence. She had family, work and financial connections to Sacramento. In addition, the undisputed evidence established that the relevant current information relating to S., her daycare, her family relationships, her friends and her activities, as well as the relevant information regarding her future care, protection, and schooling was available in California, where wife and she had settled. Although some past information regarding S. might be located in New York and India, such information would not be as significant as the information regarding S.'s current and future circumstances available in California, particularly where the information in New York would relate to only a few months of S.'s infancy and the information in India would most likely reflect the temporary living arrangements of wife and S. while wife sought to return to the United States.

The trial court erred in concluding it did not have jurisdiction under the UCCJEA. The evidence before it established jurisdiction under section 3421, subdivision (a)(2).

DISPOSITION

The judgment (order) of the trial court granting respondent's motion to quash is reversed. Appellant is awarded her costs on appeal. (Cal. Rules of Court, rule 8.276(a).)

CANTIL-SAKAUYE, J.

We concur:

NICHOLSON, Acting P.J.

MORRISON, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

[Filed 7/17/07]

C053784
(Super. Ct. No. 06FL00798)

In re the Marriage of REEMA and VIKAS SAREEN.

REEMA SAREEN,

Appellant,

v.

VIKAS SAREEN,

Respondent.

ORDER CERTIFYING OPINION
FOR PUBLICATION

APPEAL from a judgment of the Superior Court of Sacramento County, Bob T. Hight, J. Reversed.

Jay-Allen Eisen Law Corporation and C. Athena Roussos; and Cecilia Arnold for Appellant.

Law Offices of Douglas S. Srulowitz, Douglas S. Srulowitz for Respondent.

THE COURT:

The opinion in the above-entitled matter filed on June 21, 2007, was not certified for publication in the Official Reports. For good cause it now appears that

the opinion should be published in the Official Reports and it is so ordered.

BY THE COURT

NICHOLSON, Acting P.J.

MORRISON, J.

CANTIL-SAKAUYE, J.

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

No. 06FL00798

In re the Marriage of Petitioner REEMA SAREEN
and Respondent VIKAS SAREEN

RULING ON SUBMITTED MATTER

This matter came on regularly for hearing in department 123, Judge Robert C. Hight, presiding. The matters before the Court are respondent Vikas Sareen's motion to quash jurisdiction and petitioner's orders to show cause regarding custody, visitation and child abduction prevention orders. Respondents motion to quash also seeks custody.

The motion to quash is granted.

Respondent moves to quash jurisdiction on the grounds that California is not the minors home state and this Court lacks jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Federal Parental Kidnapping Prevention Act (FPKPA).

Wife states the pertinent facts are as follows.

Husband and wife married in India in February 2002. In July 2002, the parties moved to New York. On February 20, 2004 the minor, Shreya, was born in New York. On August 20 2004 the family traveled to Frankfurt, Germany. Wife believed they were going on vacation to Switzerland. They flew to India in-

stead, arriving August 21, 2004. On August 27, 2005, husband filed for divorce in India. On August 29, 2004 husband left wife and child in guest house in India and did not return. Husband took wife's Indian passport and US residency papers and the minor's US passport. Husband is a US citizen who lives and works in New York. He has not returned to India. From September 2004 until November 4, 2005, wife and child were in India with no papers. Father would not give consent to US Embassy in New Delhi to issue replacement passport for child In February, 2005 wife had to leave child in India and return to United States request minor's passport and work on her own immigration papers.

In May 2005, the Indian court ordered husband to pay child and spousal support. Support payments pursuant to this order are in arrears. On November 5, 2005 wife and child flew to California with family help. They now reside in Sacramento.

The petition for custody was filed here on January 31, 2006. This action ensued. According to the properly authenticated documents submitted into evidence by petitioner, the issue of the minor's custody is pending in the New Delhi divorce proceedings. The next hearing is scheduled for August 1, 2006, According to petitioner's counsel in Delhi, the Court has made no order restraining petitioner from leaving India with the child and there are no statutory provisions so providing. (Pet. E.xh. 3) No guardianship has been awarded and respondent has not sought access to the child in that court. According to the order issued April 18, 2006 (Pet Exh. 4) the Delhi court denied respondent's application to restrain these proceedings and a request to award interim custody to respondent.

Respondent's version of the facts is largely similar. He disputes that wife was tricked into going to India although there are no specific facts in his declaration regarding this matter. He states simply that they went on vacation to Europe and India. Respondent also states that petitioner left India in violation of court order and statute Respondent has produced no court order and petitioner's counsel in India states in a verified declaration that there is no such order. Respondent contends that petitioner was barred by statute from leaving India. The cited statute applies where a guardian has been appointed and the record shows no such appointment has been made here.

Wife has attended one mediation here in California. Husband did not attend.

Initially husband's motion to quash was based on the fact that this Court had no personal jurisdiction over him. Custody jurisdiction does not depend on personal jurisdiction over the parent. The UCCJEA codified at Family Code section 3400 et seq. governs jurisdiction in custody matters. This is not a question of personal jurisdiction over respondent.

This Court is being asked to make an initial custody determination. The issue of custody of the minor is currently pending in the divorce court in Delhi. That court has made no orders regarding custody but the matter is due to be heard on August 3, 2006. The question is whether this Court should assume jurisdiction in these circumstances. The Court is empowered to assume jurisdiction only if one of the four jurisdictional tests in the UCCJEA is satisfied at the time of the litigation. (Fam. Code § 3421(a)) The Court has jurisdiction if California is the child's home state. The Court may also exercise jurisdiction if the child has no home state and the child and at least one

parent have significant connections with California. Another basis for jurisdiction is if other states with home state or significant connection jurisdiction have declined jurisdiction in favor of California. The fourth ground is where no other state would have home state jurisdiction.

The home state is the state where the child lived with a parent for at least six consecutive months immediately before the commencement of the custody action.

In this case, the divorce case commenced in India, one week after petitioner and the minor arrived there. Thus, India was not the home state under the UCCJEA for purposed of the proceeding in Delhi. At the time the minor's home state was New York. This action was filed on January 31, 2006. At the time the minor had resided in India for a year and thus under the statutory definition India was the home state for purposes of the UCCJEA. Petitioner contends the Court should "deem" California the home state because petitioner and the minor were prevented from leaving India and if they had been able to leave it would have been the home state. Petitioner cites no authority for this proposition. It is not persuasive. Until her arrival here in November 2005, the minor had no connections with California. The assertion she would have been here earlier is purely speculative.

At the commencement of this action, India was the home state. The Court in India as not declined to exercise its jurisdiction and may in fact do so on August 1. The UCCJEA is clear, at this time absent an order from the Delhi court declining jurisdiction in favor of California, this Court does not have jurisdiction under the UCCJEA.

IT IS SO ORDERED.

DATED: July 21, 2006

/s/ Robert C. Hight
ROBERT C. HIGHT
Judge of the Superior Court

APPENDIX C

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

[Filed SEP 14, 2006]

CO53467
Sacramento County
No. 06FL00798

REEMA SAREEN,
Petitioner,

v.

THE SUPERIOR COURT OF
SACRAMENTO COUNTY,
Respondent;

VIKAS SAREEN,
Real Party in Interest.

BY THE COURT:

The petition for writ of mandate or prohibition is denied.

Dated: September 14, 2006

SIMS, Acting P.J.

cc: See Mailing List

APPENDIX D

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

[Filed Jul 19, 2007]

CO53784
Sacramento County
No. 06FL00798

In re the Marriage of REEMA and VIKAS SAREEN.

REEMA SAREEN,
Appellant,

v.

VIKAS SAREEN,
Respondent.

BY THE COURT:

Respondent's petition for rehearing is denied.

Dated: July 19, 2007

NICHOLSON, Acting P.J.

cc: See Mailing List

APPENDIX E

IN THE SUPREME COURT OF CALIFORNIA
Court of Appeal, Third Appellate
District No. C053784

[Filed Oct. 17, 2007]

S155720

In re the Marriage of REEMA and VIKAS SAREEN.
En Banc

REEMA SAREEN,
Appellant,

v.

VIKAS SAREEN,
Respondent.

The application for stay and the petition for review are denied.

George, C.J., was absent and did not participate.

Kennard
Acting Chief Justice

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Article IV; Section 2

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

* * * *

Amendment XIV; Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*

* * * *

Parental Kidnapping Prevention Act, PKPA 28 U.S.C. § 1738A in pertinent part:

Section (b)(4) "Home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

* * * *

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

* * * *

California's enactment of the UCCJEA, Family Code in pertinent part:

3402(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

* * * *

3421. (a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

* * * *

3426. (a) Except as otherwise provided in Section 3424, a court of this state may not exercise its jurisdiction under this chapter if, at the time of the commencement of the proceeding, a proceeding concern-

ing the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 3427.

* * * *

3461. In applying and construing this Uniform Child Custody Jurisdiction and Enforcement Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

* * * *

Uniform Child-Custody Jurisdiction and Enforcement Act (1997), UCCJEA, 9(1A) U.L.A. 657 (1999). The text is accessible online at www.nccusl.org

Uniform Child Custody Jurisdiction Act, UCCJA, 9(1A) U.L.A. 271 (1999).

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(3)

No. 07-945

FILED
FEB 19 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

VIKAS SAREEN,

Petitioner,

v.

REEMA SAREEN,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent Reema Sareen requests that this Court deny the petition for writ of certiorari, seeking review of the California Court of Appeal opinion in this case. That opinion is reported at 153 Cal.App.4th 371.

STATEMENT OF FACTS

1. Apart from the point that they are irrelevant to the determination of the only issue litigated in this case, viz., custody jurisdiction, Petitioner's allegations about fraud purportedly committed by Respondent and her purported attempts to abort the minor are totally false.

2. Petitioner's statement that "[w]hile in India in August of 2004, frustrated by Respondent's on-going cruel and inhumane behavior, Divorce and Custody proceedings were filed in Delhi District Court . . . " is deceptive in its failure to disclose the material facts that define the essence of this case, viz., *forum-shopping*.

On August 20, 2004, Petitioner took his wife, Respondent Reema Sareen, and their baby daughter S., then exactly six months old, to India. Respondent was under the impression that they were going to Switzerland for a vacation. She certainly did not expect Petitioner to file for divorce in India a week after landing there, and was not prepared for

Petitioner's next move, which was to return to the state of marital residence, New York, without making any provisions for their support and sustenance in India. To this day, Petitioner continues to reside in New York and has never returned to India.

Respondent and the baby were unable to leave India because their travel documents went missing. Petitioner disputes Respondent's statement that he took her travel documents (U.S. residency papers and Indian passport) and the baby's American passport, but, as the California Court of Appeal states " . . . the record clearly establishes the documents were lost and husband blocked wife's attempt to get a U.S. passport for S. by refusing to give his consent 'for purposes relating to certain court proceedings' and husband filed requests and applications in the Indian Courts seeking to keep wife and S. in India. "Contrary to Petitioner's representations to the trial court that Respondent left India in violation of a court order, the Indian courts never issued any orders to restrain Respondent and S. from leaving India. Nor was their departure from India "surreptitious," as Petitioner claims in his Petition [Factual Background, page 2]; again the record below shows that Respondent took very public steps to prepare for their return to United States, such as applying for and receiving clearance for the minor to leave India from the Asst. Foreigners Regn. Office, Head Quarters, New Delhi.

The minor's odyssey has taken her from New York, which she left at age six months, to Sacramento, California, where she arrived at age 20 months, after

more than a year of an enforced stay in India. She just celebrated her fourth birthday on xxxx xx, xxxx, in Sacramento. She is an American citizen, settled in Sacramento, where she has extended family. Her parents both live in the United States, and there is no likelihood that any of these individuals, parents or child, will move to India in the foreseeable future.

PROCEDURAL BACKGROUND

1. On November 15, 2007, the Guardianship Court, Delhi, India, issued its decision on the question presented to that court, "*Whether this court has territorial jurisdiction to try this case as admittedly both the parties are not residing in India and are said to be permanent residents of USA where the child S. was born.*" The Delhi Court ruled that *the place of jurisdiction of this litigation is not India but USA.*

Petitioner's assertion that he is filing an appeal with Delhi High Court [Petition, Procedural Background, page 5] to vacate the lower court's ruling on jurisdiction cannot be ascertained by Respondent, whose counsel in India informs her that, as of February 5, 2008, he had not received any notice of filing appeal from Petitioner or his counsel in India.

2. After he filed his petition for writ of certiorari, Petitioner filed on January 25, 2008, in the United States District Court, Eastern District of California, a Verified Complaint, case number 2:08-CV-00176-LKK-EFB, stating two causes of action based on the

same alleged violations of his constitutional rights as he claims in his petition for writ of certiorari, to wit:

> First Cause of Action: Violation of Plaintiff's Right to Equal Protection of the Laws of the Fourteenth Amendment (42 U.S.C. § 1983)
>
> Second Cause of Action: Violation of Plaintiff's Rights under Art. IV, § 2, Privileges and Immunities Clause (42 U.S.C. § 1983)

Additionally, in his Third Cause of Action, Petitioner alleges that Respondent, by filing for custody orders in the Sacramento Superior Court, and that the County of Sacramento, by filing support proceedings in New York Family Court, have violated his "Due Process of Laws under the Fourteenth Amendment (42 U.S.C. § 1983)." The Fourth Cause of Action (Fraud) does not address custody jurisdiction.

REASONS WHY THE PETITION SHOULD BE DENIED

I. It would be premature for this Court to grant certiorari because Petitioner's Verified Complaint, filed in the District Court, Eastern District of California on 1/25/2008, raises the very same issues as the petition for certiorari.

Given the numerous filings in this case – in India, New York, California, the U.S. Supreme Court, the District Court in Sacramento – it does not take a

seer to predict that these very same issues will come before this Court again, after Petitioner's Verified Complaint has wound its way through the lower federal courts.

II. Neither the decision below nor the record raised the issues stated in the first Question Presented.

Petitioner's first question, whether California Court of Appeal's determination, that India was not the minor's home state when Respondent filed her custody action in California, violates Petitioner's constitutional rights under the Privileges and Immunities and Equal Protection provisions of the U.S. Constitution was never raised by Petitioner in, nor decided by the California courts. Not even his Petition for Review of the offending decision, which purportedly violated his constitutional rights, contains a single word, phrase, sentence or paragraph that remotely resembles a claim of constitutional violations.

Petitioner cites *In re A.C.*, 130 Cal.App.4th 854 (2005), in support of his claim that he, "a resident of New York has not been treated the same as other litigants in initial child custody jurisdiction determinations in California." However, the facts of the cited case are so far different from the facts of the instant case that the former provides no support for Petitioner's claim that he was "not treated the same as other litigants in initial child custody jurisdiction

determinations in California." In *In re A.C.*, a Mexican child, who had been severely injured in an accident, had to be taken several times to the Shriners' Hospital in Sacramento, California for medical treatment that was not available in Mexico. The Court of Appeal, Fourth District, found that, although the minor had been living in California for most of a six-month period (July 1 – December 31, 2003) prior to the filing of dependency proceedings on December 31, 2003, she was in California solely for medical care and therefore the child's "home state" was Mexico, where her parents continued to live. There were no facts in that case to suggest *forum-shopping*, which is the posture of the instant case. Indeed, *In re A.C.* supports the Third District Appellate Court's determination in the instant case, that the minor's presence in India, which was compelled by Petitioner's own actions, did not make India the child's "home state" under the UCCJEA. Petitioner was treated no differently by the Third District Court of Appeal, than the Fourth District Court of Appeal treated the parents of the Mexican child.

III. The second Question Presented does not involve a federal question.

1. The Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA], cited in the Question, is not federal legislation and does not raise a federal question.

2. Citation to the federal Parental Kidnaping Prevention Act [PKPA], does not in itself raise a federal question in this case. The court stated in *Thompson v. Thompson*, 484 U.S. 174, 108 S.Ct. 513 (1988):

> "The context of the PKPA therefore suggests that the principal problem Congress was seeking to remedy was the inapplicability of full faith and credit requirements to custody determinations. . . . 'In essence [the PKPA] would impose on States a Federal duty, under enumerated standards derived from the UCCJA, to give full faith and credit to the custody decrees of other States.'"

Thompson, 181-182. The PKPA, by its own terms, does not apply to a foreign country. The PKPA is codified at 28 U.S.C. § 1738A – Full faith and credit given to child custody determinations; subsection (b)(1) provides: "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States. The PKPA does not apply to a dispute involving India.

IV. The Indian court has decided that the United States, not India, is the place of jurisdiction regarding custody of the minor S.

That decision moots the core issue of Petitioner's request for certiorari, whether the California appellate court erred in finding that California, not India, has custody jurisdiction in this case. Under the

UCCJEA [California Family Code §§ 3400-3465], which all parties agree is the law governing custody jurisdiction, when one state (including a foreign country) terminates or stays the proceeding before it because a court of another state (California) is a more convenient forum, then California may exercise UCCJEA jurisdiction. [California Family Code § 3426(a)]. This is a different section from the one relied on by the California Court of Appeal, which focused on the minor's significant connections with California [Calif. Family Code § 3421(a)(2)] but the legal effect is the same: California may exercise initial custody jurisdiction over the minor S.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 07-945

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IN THE

Supreme Court of the United States

VIKAS SAREEN,

Petitioner,

v.

REEMA SAREEN,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Third Appellate District

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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February 25, 2008

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QUESTIONS PRESENTED

1. Whether California Court of Appeal's determination, in conflict with other state courts of last resort, that India was not the "Home State" when duplicate action was filed in California, notwithstanding bright-line test to the contrary, violates petitioner's constitutional rights under the Privileges and Immunities Clause of Article IV, Section 2 and Equal Protection of laws under the Fourteenth Amendment.

2. Whether California Court of Appeal, Third Appellate District err in exercising jurisdiction for initial child custody determination and thereby creating simultaneous jurisdiction in conflict with other state courts of last resort and in contravention of the legislative purpose and intent of the uniform interstate jurisdictional act, the Uniform Child Custody Jurisdiction and Enforcement Act, UCCJEA, 9(1A) ULA 657 (1999) and the federal Parental Kidnapping Prevention Act, PKPA, 28 USC 1738A (1980).

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REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner Vikas Sareen submits this Reply Brief to address new points raised in the Opposition to Petition for Writ of Certiorari ("Opp. Brief") filed by Respondent Reema Sareen. (Sup. Ct. R. 15.6)

In its opposition brief, respondent does not contest the bright-line test for determining "Home State" in initial custody determination that is central to the issues presented requiring national uniformity. Nor does the opposition brief address the conflict with other state courts of last resort when confronted with the same issue. In fact, the opposition brief misconstrues facts and proceedings below while

remaining noticeably silent on the central issues in an attempt to distract this Court's attention.

The Statement of Facts presented in the opposition brief are replete with inconsistencies and contradictions with the record below. There is documentary evidence that unequivocally proves Fraud by the respondent. Also, the record is clear on the fact that India Court was not aware of respondent leaving India and noted that such conduct will be taken into account in its order dated April 18, 2006. Respondent's opposition brief claims petitioner has never returned to India while concealing that respondent's misuse of India's Dowry Laws was itself responsible and was tantamount to interference of his parental rights, as elaborated in the record. Further, respondent in the record below has requested restraining orders alleging that petitioner has strong ties with India and may travel there only to be contradicted by her (Opp. Brief, p. 3) where she now alleges that there is no likelihood that petitioner will move to India in the foreseeable future. In fact, the Eastern District Court of California action (Opp. Brief, p.3) alleges, with documentary evidence, perjury and false statements by the respondent in numerous federal and state forms and judicial proceedings and is actionable pursuant to 18 U.S.C. §§ 1001, 1542, 1621-1623.

Similarly, respondent's procedural background on India Court is silent on material facts as presented in petitioner's brief ("Pet. Brief", p. 4-5). Further, Respondent's opposition brief misconstrues pending litigation in Eastern District of California by concealing that it is for injunctive relief and against several defendants and is noticeably silent on Perjury and

False Statements pursuant to 18 U.S.C. §§ 1001, 1542, 1621-1623 as the fourth cause of action.

REASONS FOR GRANTING THE PETITION

I. PENDING LITIGATION IN EASTERN DISTRICT OF CALIFORNIA DOES NOT PREVENT THIS COURT FROM GRANTING WRIT FOR CERTIORARI TO RESOLVE FUNDAMENTAL QUESTIONS OF NATIONWIDE IMPORTANCE PRESENTED IN THE PETITION.

Respondent's opposition (Opp. Brief, p. 4-5), in arguing that it is premature for this Court to grant certiorari in view of pending Eastern District California litigation, fails to acknowledge that the latter action, pursuant to 42 U.S.C. §1983, is a result of actions taken by the State of California (post-decision) in violation of his constitutional rights under the color of state law. Further, respondent's argument that these same issues will come before this Court again (Opp. Brief, p. 5) presupposes that petitioner will not prevail in that action and in fact bolsters petitioner's position for this Court to grant certiorari in view of an old maxim in jurisprudence that, "Justice Delayed is Justice Denied".

Petitioner's petition raises fundamental questions requiring national uniformity among the states. One of the fundamental purposes of this legislation is to avoid jurisdictional competition and prolonged litigation, the very results caused by respondent's duplicative action filed in California as highlighted by respondent's reference to numerous filings in this case (Opp. Brief, p. 4). Petitioner contends that multiple litigation in various forums is a direct result of respondent's own actions in a blatant attempt of

forum-shopping emanating from the fraudulent marriage and its spoils planned from the outset. Divorce, Annulment and Custody actions were pending in India where parties were married under the laws of India and in advance stage with highly developed facts and evidence, unlike California, where the court is not privy to all facts leading to the present litigation. Without addressing the fundamental issues presented in the petition, respondent now prefers to delay their adjudication to another day contrary to the plain meaning, legislative intent and policies underlying the UCCJEA and the FPKPA and in utter disregard of petitioner's constitutional rights.

II. RESPONDENT HAS MISCONSTRUED THE FIRST QUESTION WHILE CIRCUMVENTING THE CENTRAL ISSUES.

Respondent's opposition (Opp. Brief, p. 5) artfully abbreviates the first question by deleting any reference to the bright-line test for determining "Home State" and California's conflict with other state courts of last resort. The argument, as presented, fails to address the central question of law, i.e. the bright-line test for determining "Home State" and instead devotes bulk of its argument on facts of the cited case that themselves are distorted to distract this Court's attention away from the central question of law. The child in *In re A.C.,* 130 Cal. App.4th 854(2005), lived in California from September 5, 2003 onwards and the bright-line test, as correctly applied in that case on December 31, 2003, rendered Mexico as the Home State, unlike the instant case.

Indeed, the key focus of the present litigation on the jurisdictional issue has revolved around the "Home State" and has been the key focus in pro-

ceedings below. Respondent's opposition brief fails to mention that both the trial court (Pet. Appendix B, p. 19a) and Third Appellate District Court (Pet. Appendix C, p. 24a) in California agreed with petitioner's position on the determination of Home State. Petitioner's rehearing in the same court and petition for review in California Supreme Court revolved around the issue of Home State and California's disparity with other state courts of last resort. Respondent's opposition brief is noticeably silent on case law cited from other state courts of last resort and defects in cases relied on by the Third Appellate Court opinion in adjudicating the instant case.

III. THE SECOND QUESTION RAISES ISSUES RELATED TO AN INTERSTATE JURISDICTIONAL ACT OF NATIONWIDE IMPORTANCE AND CALIFORNIA'S DECISION IS IN CONFLICT WITH OTHER STATE COURTS OF LAST RESORT AND IN CONTRAVENTION OF COMITY AND BASIC PRINCIPLES OF INTERNATIONAL JURISPRUDENCE.

Petitioner contends that UCCJEA is an interstate jurisdictional act with nationwide significance and applicability. California's decision has set a dangerous precedent that encourages simultaneous jurisdiction in this area of law that is likely to recur in this global and migratory economy. This case is also at odds with other state courts of last resort (Pet. Brief, p. 10-12) and will create ambiguity and give rise to inconsistent decisions in the future. Petitioner contends that this case has already gained attention in the legal circles in the State of California and is likely to transcend nationally with time unless the

issue of "simultaneous jurisdiction" is addressed squarely.

Respondent's opposition brief has misconstrued the crux of the question presented with regards to the UCCJEA and the FPKPA. Petitioner contends that California erred by creating simultaneous jurisdiction. California's assertion of jurisdiction under the UCCJEA is subject to the federal Parental Kidnapping Prevention Act, FPKPA, 28 U.S.C. § 1738A pursuant to the Supremacy Clause of the U.S. Constitution, Act. VI, § 2. The FPKPA, in pertinent part states, "A child custody or visitation determination made by a court of State is consistent with the provisions of this section only if such court has jurisdiction under the law of such State . . ." 28 U.S.C. § 1738A(c)(1). As such, any order of California without adherence to its own jurisdictional statute, would not be entitled to enforcement under the FPKPA.

Federal Parental Kidnapping Act, 28 U.S.C. § 1738A embodies principles of full faith and credit as enumerated in Full Faith and Credit Clause of the U.S. Constitution, Article IV, §2. These same principles emanate from a basic principle in law of comity that accords full faith and credit to a decision made by a court of a competent jurisdiction. India is a sovereign nation and a competent jurisdiction (Pet. Brief, p. 14) and California should not have exercised its own jurisdiction, thereby creating simultaneous jurisdiction in contravention of basic principles of international law. This question is properly put forth in this petition for the underlying principles presented, definition of "state" pursuant to the FPKPA, notwithstanding. Article III of the U.S. Constitution and inherent powers of this Court render this question fit for adjudication as presented.

IV. INDIA TRIAL COURT'S RULING WAS IN CONTRAVENTION OF DELHI HIGH COURT'S DIRECTIVE AND IS UNDER APPEAL.

Petitioner noted proceedings in India (Pet. Brief, p. 4-5) and are under appeal. It is ironic that Respondent, who has availed herself of all options in pursuing this duplicative case up to and including proceedings in this Court, wants to deny Petitioner his due process rights. Respondent cites California Family Code § 3426(a) (Opp. Brief, p. 8) to oppose petitioner's writ while opposing applicability of the same section in the proceedings below.

CONCLUSION

Petitioner has established, and respondent does not contest, that there is a clear and irreconcilable difference between California and other state courts of last resort in fundamental jurisdictional questions requiring national uniformity. Petitioner's constitutional rights have been violated as presented in the writ petition. For the reasons set forth above and in the writ petition on file with this Court, a writ of certiorari should be granted in this case.

Respectfully submitted,

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